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July 29, 2002

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Proposed Rule Making
Docket No. FCC 02-122
Reply Comments

Dear Ms. Dortch:

The Center for Telemedicine Law is grateful for the privilege of replying to the public comments submitted to the Federal Communications Commission (F.C.C.) in response to the F.C.C.'s Notice of Proposed Rule Making (NPRM) dated April 19, 2002, on the subject of Universal Service support for rural health care providers. Our comments address only those comments submitted to the F.C.C. electronically and posted on the F.C.C.'s website by July 3, 2002. This response does not take into consideration any comments the F.C.C. received by mail, through any commercial delivery service or by hand delivery, nor does it reply to any comments submitted after the deadline of July 1, 2002.

It is clear from reading all the electronically submitted comments that the overwhelming majority of commenting parties support most if not all of the changes being considered by the F.C.C. to its present interpretation of the Telecommunications Act of 1996 (the Act). Specifically, we perceive widespread support among the interested parties for the following actions:

1. **Expansion of the definition of "eligible rural health care provider."** The majority of interested parties would ask the F.C.C. to consider broadening its interpretation of the list of health care providers eligible for Universal Service support by including nursing homes, other long term care providers, certain presently ineligible rural health clinics, hospices, physicians' offices, and emergency care facilities. A smaller number would also support an expansion of the definition by including for-profit rural hospitals when such a hospital is the only hospital in a rural county, or when the hospital derives at least 50% of its gross revenues from Medicare and/or Medicaid payments, although some commenters acknowledged that this may require congressional action.

2. **Provide support to rural health care providers (RHCPs) for Internet access charges**. This proposal also was embraced enthusiastically by most of the commenters. Many would support a decision to provide this form of support based on a percentage of the access fee charged by the internet service provider (ISP); a few would base it on an urban-rural rate equalization.

3. **Revise the way the F.C.C. interprets "similar services" so as to compare services based on functionality rather than similarity of technologies**. There was solid support among the commenters for this suggestion as well. Given the fact that telehealth consultations seem to be utilizing the internet to an ever increasing degree, coupled with the fact that some technologies that are available in urban areas are unavailable at any price in some rural areas, most of the interested parties who addressed this issue stressed that functionality, from the standpoint of the end user, rather than the methodology of achieving a telecommunications (TC) connection, should be the touchstone for assessing similarity of service between a rural site and an urban site.

4. **Eliminate the requirement that a RHCP's telecommunications rate be compared with rates charged in the nearest city within the state of 50,000 or more residents**. A number of commenters expressed the view that this requirement is unrealistic and inhibits the delivery of specialty care to rural residents through telemedicine. Most commenters would urge the F.C.C. to allow a RHCP to have its rates compared to urban rates for health care providers charged in the largest city within the state, and not the closest city with at least 50,000 population.

5. **Eliminate the "Maximum Allowable Distance" (MAD) requirement**. The commenters expressed overwhelming support for this proposal. The elimination of the MAD will save the Universal Service Administrative Company (USAC) many hours of staff time spent in calculating the formula, and it will enable RHCPs to seek out specialty consultations from specialists within a network of health care providers that extends beyond the closest city of 50,000 or more inhabitants.

6. **Allow health care providers in remote insular areas (*e.g.*, Guam and the Northern Marianas) to compare their TC rates to rates charged in Honolulu, Hawaii, for purposes of determining the level of Universal Service support**. Although not all of the respondents addressed this issue, those who did voiced strong support for a reconsideration of the agency's previous decision on this issue. None of these insular areas contains a city with 50,000 or more inhabitants. Therefore, although it may prove to be costly, there was support--not limited to the respondents from the insular areas--for a relaxation of the rule requiring RHCPs in these remote areas to base their rate comparisons on such towns as Agana, Guam and Pago Pago, American Samoa. The savings in off-island travel for patients who cannot receive proper care on the islands would easily offset the increased costs to the Universal Service fund.

7. **Streamline and simplify the entire application process**. This suggestion garnered unanimous support among the commenters. A number of interested parties proposed reducing the number of forms from the present four, and requiring the TC carriers to

complete their portion of the application in a more timely fashion. Others remarked that, if a RHCP has signed a multi-year contract with a TC carrier and there have been no changes in the program during the past year, the F.C.C. should consider allowing the RHCP to complete a very simple "no change" form for submission to USAC. Some of the interested parties believed that the agency should develop "EZ" forms like the IRS's "1040-EZ" to make the process less intimidating to the RHCPs.

8. **Continue to require RHCPs to engage in a competitive bidding process in order to prevent waste, fraud and abuse**. Those interested parties who addressed this proposal agreed that the F.C.C. must continue to rely on competitive bidding by RHCPs in the selection of a TC carrier; however, most of those who responded to this question cautioned that cost should not be the only factor to consider in awarding a contract. RHCPs should also be able to consider the quality of service, whether or not the TC carrier will still be around in a few years, and questions of obsolescence of the equipment used in attaining connectivity. Some of the respondents also noted that a RHCP that has entered into a multi-year contract with a local "telco" should not be penalized by having to cancel its existing contract once the RHCP decides to apply for Universal Service support. These RHCPs have had the foresight to negotiate a contract, often with the only telco in the locality, over a multi-year period to save money; they should not be disqualified from receiving universal service support because of their foresight.

9. **Encourage RHCPs to form partnerships with clinics in local schools or libraries**. Although not many commenters responded to this proposal, those that did were unanimously in favor of it, although one or two cautioned that a health care organization should be free to decline to partner with a school or library for reasons of confidentiality of patient information.

The Center for Telemedicine Law (CTL) wishes to reiterate its support for the majority view, as summarized above, on all of the above issues. CTL reaffirms its position in support of the proposals advanced by the American Telemedicine Association, which are substantially in line with the majority view expressed by the comments submitted electronically.

CTL acknowledges the steps the F.C.C. has taken since 1997 to streamline the application process for rural health care providers. We believe that, if the F.C.C. adopts the proposals supported by the majority of the respondents to its NPRM, the annual cap of $400 million will still not be reached, although the agency's interpretation of the Telecommunications Act of 1996 will more closely reflect Congress's intention in passing the legislation.

Very truly yours,

Yadin David, Ph.D., PE, CCE
Chair, Board of Directors
The Center for Telemedicine Law